

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION, CRIMINAL PART
3 SUSSEX COUNTY
FIREARMS APPEAL NO. W31-13
A.D. #A-005505-13T1

4 IN THE MATTER OF:)
5 ISRAEL ALBERT ALMEIDA FROM) TRANSCRIPT
6 THE DENIAL OF HIS) OF
APPLICATION FOR A PERMIT) HEARING
TO CARRY)

7
8 Place: Wilentz Justice Complex
212 Washington Street
Newark, NJ 07102

9 Date: June 18, 2014

10 BEFORE:

11 HON. N. PETER CONFORTI, J.S.C.

12 TRANSCRIPT ORDERED BY:

13 LOUIS P. NAPPEN, ESQ. (Law Office of Evan F. Nappen, PC)

14 APPEARANCES:

15 SHAINA BRENNER, ASSISTANT PROSECUTOR
16 Attorney for the State of New Jersey

17 EVAN F. NAPPEN, ESQ. (Law Office of Evan F. Nappen, PC)
18 Attorney for the Defendant

19
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22
23 Audio Recorded
Recording Opr., Not Identified

24
25 Exhibit "7"

I N D E X

2

1	<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Recitation of Facts - By the Court/Colloquy 3

1 THE COURT: All right. The Almeida matter.
2 Mr. Almeida made a -- as I understand it, was denied a
3 permit to carry a handgun by the Andover Township
4 Police Chief on October 24, 2013 because of the
5 department's position or the Chief's position. Mr.
6 Almeida had not demonstrated justifiable need
7 consistent with the case law. I've received the letter
8 from Mr. Almeida's counsel dated April 1 and the
9 State's response, their letter of May 23, 2014. I've
10 also had the chance to review, I guess, what is
11 discovery material concerning Mr. Almeida's request and
12 he submitted, I believe a couple of letters to the
13 Andover Township Police Chief outlining history
14 involving himself that in his view supports the
15 justifiable need criteria. I don't think I'm dealing
16 with a constitutional issue since I think that's been
17 pretty much addressed in the federal courts. So, I'm
18 really viewing this on the basis of a question of
19 justifiable need. Are you Mr. Gilbert?

20 MR. NAPPEN: Mr. Nappen.

21 THE COURT: Oh, Mr. Nappen.

22 MR. NAPPEN: Hi there.

23 THE COURT: I didn't recognize you.

24 MR. NAPPEN: I know, Judge, it has been a
25 little bit.

1 THE COURT: You look a little different.

2 MR. NAPPEN: I do.

3 THE COURT: I probably do too.

4 MR. NAPPEN: Yes. First of all, good
5 morning, Your Honor.

6 THE COURT: Good morning.

7 MR. NAPPEN: Second of all, I apologize for
8 the delay even building in 45 minutes of extra time,
9 287 North did not let me down and required double that
10 amount of time.

11 THE COURT: You and your client can have a
12 seat --

13 MR. NAPPEN: Thank you.

14 THE COURT: -- you don't have to stand up.

15 MR. NAPPEN: But Your Honor, is right. The
16 Constitutional argument was argued and preserved as far
17 as I'm concerned in the brief so that it's there. But
18 today, we will -- our -- our presentation is focused on
19 justifiable need and why Mr. Almeida does qualify under
20 the traditional approach of justifiable need.

21 THE COURT: Okay.

22 MR. NAPPEN: Thank you, Your Honor.

23 THE COURT: Did you wish to have --

24 MR. NAPPEN: I would --

25 THE COURT: -- your client testify?

1 MR. NAPPEN: -- yes, I do. Thank you, Your
2 Honor.

3 THE COURT: All right.

4 MR. NAPPEN: If I may.

5 THE COURT: Mr. Almeida, if you'll come up to
6 the witness stand over there. If you could -- there
7 should be a Bible there. If you could place your left
8 hand on the Bible, raise your right hand.

9 I S R A E L A L B E R T A L M E I D A DEFENDANT,
10 SWORN

11 THE COURT: Have a seat. Just begin by
12 stating your full name, for the record.

13 MR. ALMEIDA: Israel Albert Almeida.

14 THE COURT: Mr. Nappen.

15 MR. NAPPEN: Thank you, Your Honor. May I
16 please the Court.

17 DIRECT EXAMINATION BY MR. NAPPEN:

18 Q. Okay. Mr. Almeida, if you could -- first start,
19 tell us what -- what is your employment. What do you
20 do?

21 A. I own and operate a small business, it's a
22 property management fir -- business. It deals with
23 property management, obviously, construction, tenant
24 rent collection, lease management.

25 Q. And, what do you do in regards to those

1 issues, what is the actual physical work that you do?

2 A. The primary function is lease management, tenant
3 management and rental collection.

4 Q. So, what's involved in that? What do you
5 actually to -- to do?

6 A. Interviewing tenants, placing them in -- in
7 housing, collecting rents, disbursing the funds to my
8 customers, which are the apartment of home owners.
9 They -- they are my customers. Lease management would
10 be also dealing with any tenant related issues, any
11 apartment related or home related issues. Those issues
12 can be maintenance, dealing with vacant property,
13 securing them.

14 Q. And, where are these properties located?

15 A. Overwhelming majority of them are in Essex County,
16 Newark and Irvington. I would say 99 percent of them
17 are located in that area.

18 Q. Okay. And about how many tenants do you have
19 that you service?

20 A. Approximately 40 to 60 units.

21 Q. And could you describe the areas where these
22 tenants' properties are?

23 A. Officially or unofficially?

24 Q. No, just in your experience. In your
25 observations.

1 A. They are -- a majority of them are in rough areas.
2 Areas that are high crime areas. High -- high crime
3 areas, low income, section 8 tenants. Those are the
4 majority of the areas that I -- that I deal with. A
5 gang -- a lot of gang related crimes in the area.

6 Q. Now, you understand that one of the criteria
7 for obtaining a license -- a permit to carry is what's
8 called justifiable need, right?

9 A. That's correct.

10 Q. And you understand that that entails
11 regarding threats to your personal safety, et cetera,
12 right?

13 A. Correct.

14 Q. Have you experienced anything in line of
15 threats to your person?

16 A. Yes, I have.

17 Q. Okay. Could you talk about any examples of
18 that?

19 A. There are multiple examples. The main example is
20 why are we here today, because of an incident that I
21 did have with a tenant about a year ago who is an
22 admitted gang member, a career criminal who served
23 prison time for aggravated assault. The threatened my
24 life. He threatened my life as long as I live in New
25 Jersey. He stated that, you know, he'll get me

1 regardless of how long it takes and if it's not him it
2 will be his street crew because he -- he admitted that
3 he was a -- a street gang member.

4 Q. What's his name? What is the individual's
5 name?

6 A. It should be in the police report. I believe
7 there should be two names there including an alias.
8 And -- but besides that incident there have been
9 several other incidents. More suggestions when I
10 approach the area, I am accosted by individuals asking
11 me what am I doing in the area. If I can give them
12 some money because they know that I'm carrying money.
13 They know that I'm there to collect rents. Just
14 recently in the last week of April I was scheduled to
15 respond to one of my properties for a maintenance
16 issue. A few minutes before my arrival there was a
17 shooting out front, an attempted robbery of an
18 individual and they ran into the back yard of my
19 property where they continued shooting at the
20 individual attempting to rob him. That was only within
21 15 minutes of -- before my arrival. There have been,
22 you know, several remarks made, better -- what you got
23 in there, what kind of mon -- how much money you got,
24 let me get some of that money.

25 MR. NAPPEN: Let me show counsel the police

1 report. Thank you. Your Honor, my I approach --

2 THE COURT: Yes.

3 MR. NAPPEN: -- and have this marked? Thank
4 you.

5 THE COURT: I guess it can be marked A-1.

6 BY MR. NAPPEN:

7 A. Also, I'd like to add that --

8 THE COURT: Hold on.

9 MR. NAPPEN: Thank you.

10 BY MR. NAPPEN:

11 Q. Mr. Almeida, I'd like you to take a look at
12 what's been marked A-1. Do you recognize that
13 document?

14 A. Yes, I do.

15 Q. What is that?

16 A. This is the police report that I filed the day of
17 the -- the threats made against me.

18 Q. And what date was that?

19 A. It was in June and it should be stamped June 11,
20 2013.

21 Q. Okay. And, do you remember who you spoke to
22 at the police?

23 A. It was -- it was the officer that was at the desk
24 there at the north district.

25 Q. And -- and what did you go there specifically

1 to file a complaint about -- file a report about,
2 sorry?

3 A. I -- because I took those death threats against my
4 life serious and I advised the tenant that I was going
5 to file a death threat report. And his response to me
6 was go ahead. I'll shoot the police also. So, I took
7 this individual very serious due to my former line of
8 work and the exposure that I've had with this -- these
9 type of incidents. So, I went immediately to the
10 Newark Police Department which is the north district
11 not too far from this -- from this residence to file
12 this police report.

13 Q. What were the specific threats that were made
14 against you?

15 A. There were several. I believe only one or two of
16 them made it onto the police report. I assume it's
17 because they did not have enough space. But there was
18 about 15 of them and --

19 Q. What were they? Say them specifically that
20 were made against you. What were they?

21 A. Specifically were I will -- "I am going to put a
22 cap in your head, you white fag." Excuse my language,
23 but I'm just -- what was directly stated to me. "I
24 will get you on a dead end street where the police
25 don't come around and no one will see it." "I will

1 make it look like a robbery and dump your body on the
2 dead end street and nobody will catch me." Also,
3 several references of putting a bullet -- bullet in my
4 head. And also several references made "I know where
5 you have to go collect the rents. I know what type of
6 vehicle you drive. I know what you got to do out here.
7 As long as you live in New Jersey you're no longer
8 safe. And if I don't get you, my boys will." And then
9 he went on to say "you messed with the wrong street
10 nigger. And I'm a gangster. And you will get yours
11 eventually."

12 Q. What -- do you know what lead him to make
13 these threats against you?

14 A. We had taken over the property. The customer is
15 -- lives out in New York. We had taken over the
16 property the first week of June, June 1st, I believe.
17 And I went over there to introduce myself as the new
18 property manager and that we -- any problems with the
19 property, he would be dealing with me directly. Giving
20 him basically my information, phone number, emergency
21 contact number. And then we discussed the lease. We
22 discussed the rent. He advised he that he did not have
23 the rent money to give him a few days. I said okay,
24 not a problem. We'll give you a few -- you know, a few
25 days. On the fifth of the month which was June 5th, I

1 reached out to the individual again. Hey, how -- how
2 are you doing with the rent? And that's when he
3 started getting aggravated 'cause I already had called
4 him a second time on the third which was the third
5 contact that I had with the individual was on June 11th
6 and I advised him the lease states you have to pay up
7 to the fifth. The customer and because of the lease we
8 have to file for an eviction any time rent is not paid
9 after the fifth. And we could always cancel the
10 eviction as long as the rent is paid. And that is when
11 he started with his threats. And I advised him what
12 the eviction process did if he does not cooperate, we
13 will have to file for a warrant or removal. I
14 basically was explaining the steps to him on the
15 eviction process. And that is when he proceeded with
16 "well, go ahead. I'll put a bullet in your head." And
17 that's when I advised him, I took that threat serious
18 so I'm gonna notify the police.

19 Q. No, you -- you said based on your former
20 experience or employment, what was that former
21 experience or employment --

22 A. I served --

23 Q. -- you referenced?

24 A. -- I served the City of Newark as an emergency
25 medical technician since 1989. I am no longer

1 certified as an EMT. But I was an emergency medical
2 technician since 1989 and 15 of those years I served as
3 the lead medic on emergency response team with the
4 Newark Squad team.

5 Q. So, you dealt with how many individuals as
6 you say --

7 A. I've dealt with many individuals. I've seen
8 everything out there that evil, you know, an do to an
9 in -- innocent bystander. I've seen shootings,
10 stabbings not only of adults but of children, two weeks
11 old. I've been a victim of crime myself even during,
12 you know, the work. We've been shot at in the
13 ambulance. We've been -- I've been personally stabbed
14 on an emergency call in the mid '90's because of a
15 domestic dispute that we walked into for an emergency
16 call. The 15 years that I served as the lead medic for
17 the emergency response team which is the -- also known
18 as the swat (phonetic) team for the Newark Police.
19 The majority of that were high risk narcotic warrants
20 and homicide suspects warrants.

21 Q. What is your family background, are you
22 married, do you have children, what is your --

23 A. I'm married to [REDACTED] (phonetic) she
24 is a [REDACTED]
25 [REDACTED] I have a

1 5 year old daughter, [REDACTED] (phonetic) and I have a 2
2 years old daughter, [REDACTED]

3 Q. Now, in addition to this threat you discussed
4 that you filed, were there -- have there been other
5 threats, other than that threat?

6 A. There have been suggestions made. There have been
7 attempts of -- of car jackings made where I have been
8 force to leave an area because I noticed the danger of
9 the threat approaching. There have been basic verbal
10 treats of, you know, I'm going to kick your ass, in
11 that nature.

12 Q. So, do you think having a handgun would be
13 necessary for you?

14 A. I deal in a very dough area. My -- my work area
15 is like I -- I mentioned earlier the majority of it is
16 Newark and Irvington. These areas are very high crime
17 areas, well known for gang activity. Well know for
18 narcotic activity. The overwhelming majority of my
19 business requires either rental collection which could
20 -- majority it's high -- deals with cash. It's not
21 direct deposit or it's not with -- with checks or money
22 orders. And because of that I am constantly vigilant
23 because the threat is out there. And I know that it is
24 just a matter of time before I am attacked, robbed --
25 because they know what I'm doing there. They know the

1 business that I'm conducting in this area.

2 Q. And just for purpose of background, even
3 though we're focusing on justifiable need, what is it
4 -- what training or experience do you have with a
5 firearm? You're qualified under the statute --

6 A. I have extensive experience -- I qualify. As you
7 can see, I have the qualification's record there of one
8 hundred percent. I have several NRA training
9 certificates. I am also a certified range safety
10 officer with the NRA as well.

11 MR. NAPPEN: Nothing further. Thank you,
12 Judge.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION BY MS. BRENNER:

15 Q. Good morning Mr. Almeida.

16 A. Good morning.

17 Q. Now you said that part of your
18 responsibilities, as part of your line of work is
19 rental collection. How do you go about collecting rent
20 from your tenants?

21 A. We -- I collect rents, issue them receipts and the
22 -- those rent collections are actual house calls to --
23 to the apartment -- to the tenant -- with the tenant.

24 Q. And you go door to door?

25 A. Yes.

1 Q. And, you said that the way that they paid was
2 in cash?

3 A. The majority of it is in cash, correct.

4 Q. Do any of your tenants pay by mail?

5 A. No.

6 Q. Or by check?

7 A. Very little.

8 Q. And, why do the -- is the rents due in cash?

9 A. A majority of the time it's because that's their -
10 - that's their lifestyle. That's their living
11 condition. They do not have a bank account. They do
12 not have means of paying me any other way but with
13 cash.

14 Q. And have you ever required tenants to deposit
15 the cash and make out a money order or a rent check?

16 A. We have attempted to get that done. We just find
17 it extremely difficult. If we ask them to go to a bank
18 and deposit it a majority of the time they do not do it
19 and their excuse is they do not have the means to get
20 to the bank. Or they do not have the means to -- to
21 get a money order because they are either -- they have
22 no transportation. They may be elderly, handicapped.
23 They just do not have the means to pay any other way
24 but with cash.

25 Q. And, if -- when they're paying cash are you

1 carrying the cash with you?

2 A. Absolutely.

3 Q. How much money are you carrying with you as
4 you're going door to door, typically?

5 A. It could be anything between \$5,000 to \$13,000 --
6 \$5,000 to 15 -- to \$13,000.

7 Q. And do you carry that with you throughout the
8 day, or do you go to the bank in between?

9 A. I installed a safety lockbox in my vehicle that I
10 place the -- the cash. It would not be convenient to
11 go to the bank after every single transaction just
12 because of the distance and the time constraints.

13 Q. And, you said that you were threatened and
14 you mentioned the specific incident in which you were
15 threatened with this particular tenant. Did that
16 tenant eventually pay the rent?

17 A. No.

18 Q. And, is he still currently a tenant at your ;
19 one of your properties?

20 A. He is no longer at one of my properties, but he
21 resides five houses down from another property that I
22 manage.

23 Q. And have there ever been physical
24 confrontations between you and any tenants who were --
25 any -- anyone in the surrounding vicinity?

1 A. I immediately withdraw myself from that situation.

2 Q. And after you were threatened by this
3 particular individual, have you taken any precautions
4 or changed the manner in which you collect rent in any
5 way?

6 A. I do all the time just because of my past
7 experience in -- in -- in -- in -- I -- but there are
8 only so much that you can do. You could try to meet at
9 different times of the day, but there's really no day
10 that's -- hour of the day that's safe. I am always
11 vigilant and that is because of my past training. I
12 know how to recognize danger. If I can avoid it, I
13 will. It does not mean that I'll be successful all the
14 time.

15 Q. So, what specific precautions have you taken?

16 A. If I see a large gathering in front of a property
17 that I'm responding too, maybe I'll go around the block
18 or come back another time, if possible -- if it's
19 possible. That is one of the measures. I -- you know,
20 avoid confrontation as much as possible. But at all
21 times I avoid confrontations. It's not [sic] as much
22 as possible every time.

23 Q. And have you considered at all hiring, I
24 guess, some type of security in order to accompany you
25 as you go to collect these payments?

1 A. In order to hire security I would have to increase
2 my fees and increase the rents, that would put me out
3 of business, ma'am.

4 Q. And as part of your precautions have you been
5 -- have you changed any of the, I guess, as I might
6 have stated before and as you stated before with regard
7 to the manner in which rent is being paid and the
8 payments are being made to you?

9 A. Again, it goes back to the beginning. It is up to
10 the tenant how they -- they -- they pay. I cannot
11 force them to go get a bank account. I cannot force
12 them to go and drive to a bank and deposit. If they
13 tell me they do not have that mean, they do not have
14 that mean. I wish I could, but it's in -- there's
15 restraints there and a majority of the time it's
16 impossible.

17 Q. Huh hum.

18 A. So, I would have to accept what -- what is given.

19 Q. Now, have there been any recent threats? I
20 know you mentioned there was something in April?

21 A. April 28th, there was a shooting in front of one
22 of my properties, [REDACTED] Newark where
23 they attempted to rob an individual that was walking in
24 front of my property. This individual ran to the back
25 yard of the property where two gunmen chased after him

1 and continued shooting at my property and at this
2 individual attempting to rob him. Recently on the
3 intersection of South 15th and 18th Avenue, I was
4 sitting at a red light going to a home inspection
5 appointment and five individuals on bicycles approached
6 my vehicle laughing. One individual attempted to open
7 up my door. I took that as a possible an attempt of
8 car jacking where I was forced to run the red light and
9 flee the area. And these individuals chased after me,
10 I'd say maybe a hundred feet on their bicycles and
11 obviously in my vehicle I took off.

12 Q. Now those individuals, did they recognize
13 you?

14 A. I -- I -- I do not know.

15 Q. But they weren't tenants. You didn't
16 recognize them as tenants?

17 A. No. They were individuals on bicycles.

18 Q. And those were the most recent threats. One
19 was the incident where it happened in the vicinity that
20 you were at but not specific to you, correct?

21 A. And then there are multiple times when I
22 approached --

23 Q. Oh, I'm sorry, I just -- I just wanted to
24 clarify that incident that -- that happened --

25 A. These two are --

1 Q. -- in the vicinity where you were --

2 A. -- the most recent ones, correct.

3 Q. -- that wasn't a threat to you?

4 A. I took it as a threat, absolutely.

5 Q. Oh, okay. So, they did make their presence
6 known to you or -- or threaten you?

7 A. Five individuals --

8 Q. Did they speak with you?

9 A. -- approached me on bicycles, one individual
10 attempted to --

11 Q. Oh, no, not that threat. I meant the -- I'm
12 sorry. I -- I was getting confused. I meant the
13 incident in which you stated that in April there was a
14 shooting on the property near you?

15 A. That was -- I -- that was possible a random
16 attempted robbery.

17 Q. Okay. I just wanted to clarify.

18 A. No.

19 Q. And then you were continuing saying --

20 A. It just happened to be that it occurred as I was
21 in route to that -- that -- that facility for
22 maintenance.

23 MS. BRENNER: Your Honor, I have no further
24 questions.

25 THE COURT: Anything further, Mr. Nappen?

1 MR. NAPPEN: Nothing further. Thank you,
2 Judge.

3 BY THE COURT:

4 Q. Mr. Almeida, with regard to this incident for
5 which you filed the police report in June 11 of 2013,
6 you've told us that this person has relocated. Did you
7 evict that individual?

8 A. Yes. We did preform the eviction, correct.

9 Q. In other words you filed a -- a complaint in
10 landlord tenant court in Essex County?

11 A. That's correct.

12 Q. Did the individual appear?

13 A. No, he did not.

14 Q. So, in order for possession or judgment of
15 possession was granted and a warrant for removal --

16 A. That's correct.

17 Q. -- issued?

18 A. That's correct.

19 Q. And did the constable remove the individual?

20 A. That -- when we arrived the day of, actually I did
21 not show because of the threat. The constable called
22 me up on the phone and said the individual -- ah, they
23 gained entry into the apartment and it appears that
24 they abandoned the apartment. There was no signs of
25 anyone else living in there.

1 Q. So, when the warrant was executed no one was
2 there?

3 A. No one was there.

4 Q. And, do you know or recall off hand when it
5 was that that warrant was executed?

6 A. It -- in Essex County it -- it's -- it's
7 approximately a 2 -- 2 month waiting period just
8 because of, you know, so many -- so many cases. It was
9 mid August.

10 Q. Of 2013?

11 A. That's correct.

12 Q. All right. Since the warrant was executed,
13 have you had contact with this person?

14 A. No, I have not had contact with this person. I am
15 told that he resides five house away from another
16 property at a different location. I am told that he
17 has asked about me. If I have come around.

18 Q. Well --

19 A. But I have not --

20 Q. -- you were told that by somebody else I
21 gather?

22 A. Someone else that's familiar with the -- with the
23 incident, familiar with the in -- the individual?

24 Q. But there's been no direct contact by this
25 person with you?

1 A. That's correct, no.

2 Q. And you say from your information he resides
3 about five dwellings from where your property is
4 located?

5 A. That is what I'm told, correct.

6 Q. This -- this would be the property that he
7 was previously residing?

8 A. No, this is at a -- another location.

9 Q. Another location.

10 A. Correct.

11 Q. So, there's been no contact directly between
12 you and this person since the incident in June of 2013?

13 A. That's correct. The Newark Police attempted to go
14 locate him to -- to bring him in and they were not able
15 to -- to make contact with the individual. And in
16 fact, their exact words to me were, why do you not --
17 why don't you go to his house and pretend that you're
18 gonna discuss the lease and if he's him call us back so
19 we can go get him.

20 Q. But they know who it is?

21 A. I believe so. Correct.

22 Q. And, you have not pushed the incident any
23 more with the police in trying to apprehend this
24 person?

25 A. That is correct because I am told the last contact

1 I had with the detective was that they cannot locate
2 him and they left it at that. They did not seem
3 interested.

4 Q. But they -- did you let them know that he may
5 be living five dwellings away from one of your --

6 A. Correct.

7 Q. -- properties?

8 A. Correct.

9 Q. But there's been no --

10 A. There's been no contact.

11 Q. -- no contact. And, have any other
12 individuals approached you about this person?

13 A. Not about this individual, no.

14 Q. Okay. With the tenants that you do have,
15 have there been any other incidents in which tenants
16 have made similar threatening comments to you?

17 A. Not necessarily tenants. But I would assume they
18 are family members or guests of tenants that are
19 residing in the buildings. When I enter the building,
20 they have said, here comes the money man. Let me get
21 some of that cash. I know you have a lot of it. What
22 are you doing around here, you know you don't belong
23 here. Statements like that have been made.

24 Q. I see. All right. Thank you, Mr. Almeida,
25 you can step down.

1 A. Thank you.

2 (Witness is excused)

3
4 THE COURT: Any other evidence to submit, Mr.
5 Nappan?

6 MR. NAPPEN: Thank you, Your Honor. Nothing
7 further, I just ask that A-1 be made into the record.

8 THE COURT: Any objection, Ms. Brenner?

9 MS. BRENNER: No objection, Your Honor.

10 THE COURT: All right. You can give it to
11 the clerk to mark in evidence.

12 MR. NAPPEN: I will. Thank you, Your Honor.

13 THE COURT: Does the State have any evidence
14 to present?

15 MS. BRENNER: No, Your Honor, although if
16 there's no objection, I -- I have the letter of denial
17 from the Chief of Police and that I would like to move
18 into evidence, unless the Court already has a copy.

19 THE COURT: Well, I have the letter of
20 October 24, 2013 --

21 MS. BRENNER: OH, that's the letter, Your
22 Honor. Then I withdraw my application.

23 THE COURT: That could be considered by the
24 Court as S-1 in evidence.

25 MR. NAPPEN: There would be no objection,

1 Your Honor, part of the process.

2 THE COURT: Mr. Nappen.

3 MR. NAPPEN: Thank you, Your Honor.

4 THE COURT: You can have a seat, Mr. Nappen.

5 MR. NAPPEN: I like to make losing argument.

6 And that is, it's been said that a -- a gun is like a
7 parachute because if you need one and don't have one,
8 it's highly unlikely you'll ever need one again. And
9 this is kind of the conundrum that presents itself in
10 these cases. It's plain that he is subjected to
11 threats and that he's in a dangerous area and has been
12 given specific threats against him which are police
13 record. That he's a target given the amount of money
14 and cash and even his very presence in a place where he
15 is challenged and yet has to be there to do his job.
16 The standard for justifiable need was at -- is actually
17 codified in the administrative code. And that it's
18 N.J.A.C. 13:55-2.4 and it defined justifiable need as
19 the urgent need of self protection due to specific
20 threats or previous attacks posing at special danger to
21 an applicant's life. The price criteria is actually
22 applied to security guards and to private eyes, et
23 cetera. The urgent necessity requirement has been the
24 traditional requirement in New Jersey and it's that
25 special danger in effect is the issue and that's

1 demonstrated by these threats. It's a special danger
2 to him because of what he uniquely does. The position
3 that he's in, in having to do it. To say that he would
4 hire security is kind of funny in a way because that
5 security would be armed and would have to have met New
6 Jersey's standard. And to suggest that that's an
7 alternative suggests that the standard is there for
8 having the issuance of a license to him. Because if
9 security is what's necessary and they're armed to
10 protect him, they have to meet the standard as well.

11 He is responsible for his life. He has a
12 family, et cetera. But beyond that, and I know in our
13 brief we raise the Constitutional issue is that we're
14 not -- that we were just preserving, but not arguing
15 from that. But there is a point to the Constitutional
16 issue that I think has not been raised much. And that
17 is that Heller not only in finding a Second Amendment
18 right to bear arms and the question of whether -- how
19 it applies, you know, to the bearer part outside the
20 home. Without getting into that, there's another
21 element. And that is, the court also found there's a
22 right to self defense. That's another part of Heller
23 a right to self defense. Mr. Almeida has a right to
24 self defense. And he as right then to the means of
25 self defense which even in looking at New Jersey's

1 test, he's represented the danger, the threats and what
2 he does in his special capacity, not an average citizen
3 that may have to go to Newark, this is what he does.
4 This is what he faces. He has these threats and he has
5 a Constitutional right to self defense. He needs the
6 means to be able to defend himself. Because this
7 hearing today will stand in effect as a record of his
8 attempt to do that very thing. And if he's denied his
9 parachute and he needs one, how does the question get
10 answered after that? What do we tell his daughters why
11 he was denied the means? How do you answer that? I
12 don't know. I don't know what -- it would be a very
13 difficult thing to have to do and I hope we don't have
14 to do that. He should be able to defend himself. He's
15 trained. He faces the threats. He's met the standard
16 and he has a Constitutional right to self defense. And
17 I would ask that Your Honor grant this permit in the
18 scope of the capacity of what he does. You know, it
19 can be narrowly tailored, but make it so he has that
20 ability during those times to do what he needs to do
21 safely. Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Nappen. Ms.
23 Brenner.

24 MS. BRENNER: Thank you, Your Honor. I'll --
25 I'll rely on what was submitted to the Court in my

1 brief. However, just briefly I'll state that it's the
2 State's position the defendant has not met the standard
3 under justifiable need. Well, there does need to be an
4 urgent necessity for protection under the statute.
5 Another part of that statute reads that -- that such
6 danger cannot be avoided by other means. And, in this
7 case, based on the testimony provided by Mr. Almeida,
8 it's the State's position that this -- these threats
9 can be avoided. The manner in which the rents are
10 collected by carrying large amounts of cash without
11 stopping you know to deposit the money at a bank by not
12 accepting checks or requiring tenants to pay by check
13 or by mail, there are options in which the defendant
14 has from other means.

15 THE COURT: What statute are you relying
16 upon?

17 MS. BRENNER: Oh, just -- that's New Jersey
18 statute -- it's the administrative code --

19 THE COURT: No --

20 MS. BRENNER: -- 13 -- 13:54-2.4(d)(1).

21 THE COURT: Well, that hasn't been submitted
22 to me, but I have what Mr. Nappen cited on page 5 of
23 his letter. But the other -- did you submit anything
24 from the administrative code?

25 MS. BRENNER: I believe it's in my brief on

1 page three, Your Honor.

2 THE COURT: That was I think the
3 provisions --

4 MS. BRENNER: It's the same provision as --
5 that's cited on page 5 of defense counsel's brief.
6 Which again, I was just pointing to the part where it
7 says cannot avoided by other means.

8 THE COURT: Oh, all right. I see what
9 you're saying. Okay. So, basically the State's
10 argument is there are -- there are alternatives for
11 this individual given the nature of the work that he's
12 elected to pursue?

13 MS. BRENNER: Yes, Your Honor. And that his
14 occupation should not be considered -- or used to
15 determine whether a carry permit should be issued in
16 this case.

17 THE COURT: There were -- there was a case
18 involving bail agents or some --

19 MS. BRENNER: Fugitive recovery agents, yes,
20 Your Honor.

21 THE COURT: Fugitive recovery agents.

22 MS. BRENNER: Huh hum. And it's In re
23 Borenski (phonetic), I believe that's also in my brief,
24 Your Honor.

25 THE COURT: Where they were actually shot at?

1 MS. BRENNER: Yes, Your Honor, where they
2 were shot at. They had been threatened with a variety
3 of weapons and did carry a large amount of cash. I --
4 I referenced it briefly on page 4 of my brief.

5 THE COURT: Yeah, it's 363 New Jersey
6 Super --

7 MS. BRENNER: 10.

8 THE COURT: -- page 10, an Appellate
9 division --

10 MS. BRENNER: From 2003.

11 THE COURT: -- 2003 decision.

12 MS. BRENNER: Yes, Your Honor.

13 THE COURT: All right. Was there anything
14 further you wanted to emphasize?

15 MS. BRENNER: No, Your Honor. The State
16 rests.

17 MR. NAPPEN: Thank you, Judge.

18 THE COURT: Did you want to say --

19 MR. NAPPEN: I'd just point out that the
20 alternate means argument of the State that's why I'm
21 talking about if it's hiring security guards then
22 they're already meeting the standard. So, there really
23 is not an alternate means for him. And, I would point
24 out that Borinski, Price, the others are pre Heller,
25 they are cases that were decided under Burton v. Sills

1 (phonetic) where there was no recognition of a second
2 amendment at all in New Jersey and it was deemed
3 strictly a privilege. Heller has made it clear there's
4 a right to self defense and whether or not New Jersey's
5 test stands for -- Constitutionally or not is another
6 issue for talking here, not actual threats from this
7 individual meeting the administrative standard. Thank
8 you, Judge.

9 THE COURT: All right. Well, I gather the
10 Constitutional issue was settled so to speak by reason
11 of a third circuit's decision in Drake vs. Filco at 724
12 F.3d 426 which -- for which there was a petition of
13 *certiorari* to the United States Supreme Court which was
14 denied. Now, there's always a right of self defense
15 regardless of any of these cases. An individual
16 certainly has a right of self defense. The question
17 here is, is there a substantial threat of serious
18 bodily harm in the carrying of a handgun therefore is
19 necessary to reduce the threat of unjustifiable --
20 unjustifiable serious bodily harm. There are a couple
21 of points that I would note here. Mr. Nappen is
22 emphasizing the self defense argument because under the
23 Price standard of justifiable need, I -- I dare say I
24 find the argument lacking in terms of how a handgun
25 will reduce the threat of unjustifiable serious bodily

1 harm. Because if anything, the presence of a handgun
2 can in a certain sense cause the -- an increase in
3 terms of -- of bodily harm. If individuals become
4 aware as -- and Mr. Almeida is indicating that
5 everybody in the neighborhood knows what he's doing if
6 they become aware that he's carrying a handgun there is
7 the potential for an increase in violence in that
8 context.

9 So, I -- I question whether the second part
10 of the Price standard is truly met. The administrative
11 code which has been cited to the Court sug -- also
12 indicates that the individual has to in -- employ means
13 other than the issuance of a hand gun permit if that
14 can be done. Here other methods are suggested in terms
15 of the collection of rent through checks, through money
16 orders. Through depositing of funds in a bank account.
17 And as Mr. Almeida testifies, these are not especially
18 convenient or profitable for him in terms of the nature
19 of the business that he has chosen to pursue after
20 leaving his prior employment. But there -- these means
21 are available to him in terms of rent collection. And
22 I can understand the practicalities of the situation
23 because the -- the owners are looking to maximize their
24 investments certainly. He's looking to maximize his
25 profit so the question is how best to do that? That

1 is the least expensive way so to speak to accomplish
2 those goals. And, it -- as it turns out its cash
3 collection of rent in areas that he describes as being
4 high crime areas, gang infiltrated areas. It's a risky
5 business so to speak in terms of what he has chosen to
6 pursue. But, still, the question becomes substantial
7 threat of serious bodily harm. I guess the focus in
8 terms of the first prong of the test is on the word
9 substantial. I questioned him about this particular
10 individual against whom he filed this police report
11 which is A-1 in evidence. Apparently after these
12 initial verbal threats were made to him, that
13 individual, I gather was evicted as a result of a
14 dispose action that he initiated and when the warrant
15 for removal was executed, no one was there. Now, the
16 question is, where is this person in terms of
17 presenting a continuing threat to Mr. Almeida.
18 Apparently, there's been no contact by this individual
19 with the defendant for approximately a year. The
20 defend -- Mr. Almeida indicates that he's heard that
21 the individual is still looking for him. Or, that his
22 gang, if you will, is still aware of Mr. Almeida's
23 presence.

24 Frankly, it would help his case for specific
25 -- rather for a substantial threat to have some

1 evidence that would address that particular issue.
2 Because I think that would lend substance to what Mr.
3 Almeida is arguing to the Court by this application.
4 But, in term -- and the Court would also make note of
5 the fact that Mr. Almeida has indicated with regard to
6 other tenants in -- in these facilities, that these
7 people are aware of what Mr. Almeida does, why he's
8 there. In fact, they've told him, according to him,
9 that he has no business being there.

10 So, while a threat was given to the -- Mr.
11 Almeida, the question is, is it a substantial threat as
12 apposed to an individual having been contacted three
13 times by Mr. Almeida looking for payment of rent and
14 then becoming frustrated apparently and verbally
15 lashing out at him threatening to kill him, a he's
16 described.

17 I think more has to be demonstrated to
18 indicate a substantial threat exists without there
19 having been any further contact by this person with Mr.
20 Almeida. And secondly, I would note under the
21 administrative code that's been cited, there are other
22 means that he can employ they may not be the most
23 profitable under the circumstances, but they do exist
24 in terms of rent collection in which he's engaged.

25 And, generally speaking in electing to engage

1 in this type of line of work and putting himself in --
2 in this particular area, he's done the voluntarily of
3 his own accord. But, in doing that he has to be
4 mindful of the requirement of justifiable need for a
5 per it to carry a handgun to be issued and if one -- if
6 -- if a handgun was in his possession given his
7 description of the neighborhood, the question exists as
8 to whether that would really reduce the threat of
9 unjustifiable -- unjustifiable serious bodily harm or
10 potentially increase it.

11 So, for these reasons, the Court will deny
12 the application and ask the State to submit the
13 appropriate order.

14 MS. BRENNER: Yes, Your Honor.

15 THE COURT: The exhibit that Mr. Nappen
16 submitted can be returned to him.

17 COURT CLERK: Should I make a copy of it
18 Judge?

19 THE COURT: We have it in the file.

20 COURT CLERK: Okay.

21 (Off record).

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1 Certification

2 I, Eileen M. Zakrzewski, the assigned transcriber, do
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 Date: August 18, 2014

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